Court No.3

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition No. 3356 (M/S) of 2001
(Old No. 16500 of 1997)

1. State of U.P. through Director,
   Qality Promotion Cell, P.W.D. Lucknow.

2. Junior Engineer, Regional Laboratory,
   P.W.D. Kuwanwala, Dehradun

3. Deputy Director, Research Development
   and Quality Promotion Cell, U.P. P.W.D.
   Luknow.

4. Assistant Engineer, Regional Laboratory,
   P.W.D. Kuwanwala, Dehradun ….Petitioners.

Vs

1. Presiding Officer, Labour Court,
   U.P. Dehradun.

2. Buddhi Singh S/o Gyan Singh,
   C/o N.P.Juyal, R/o Rochipura, P.O. Majara,
   Dehradun, District Dehradun ……Respondents.

Sri B.D.Kandpal, learned Standing Counsel for the petitioners.

Sri Gopal Narain, learned counsel for the respondent No.2.

Date of judgment-6-11-2003

ORAL JUDGMENT: **(Per: Hon'ble Irshad Hussain, J.)**

By means of this writ petition the petitioners prayed for a writ in the nature of certiorari quashing the award, dated 6-6-1996 passed by the respondent No.1 in adjudication case No. 439 of 1991.

2. The respondent No.2 worked as Research Attendant in the establishment of the petitioners known as Regional Laboratory, P.W.D., Kuwanwala, Dehradun from 6-6-1989 to 30.11.1990. He thus worked for more than 240 days in the calendar year. He claimed that his services were dispensed with and terminated without giving him the notice and retrenchment compensation. He therefore, claimed that he is entitled to be reinstated and paid back wages and compensation for illegal termination of service.

The petitioners took the stand that the respondent No.2 was engaged as unskilled labourer on purely daily wage basis and his engagement was of purely contractual nature. The research lab of the petitioners could not sustain its existence for want of work and funds and therefore on the cession of work it was not required by them. According to the petitioners provisions of section 6-(N) of the U.P. Industrial Disputes Act, 1947 (for short 'the Act') were not at all attracted to the case of the workman in view of the provisions of section 2 (oo) (bb) of the industrial Disputes Act, 1947.

4- A labour dispute having been raised the same was referred to labour court under section 4()k of 'the Act'. The reference made was:-

> "Whether the termination of the services of the workman Buddhi Singh from the post of Research Attendant from 30-11-90 was illegal and without jurisdiction. If so, to what relief the workman is entitled?"

5. the labour court, respondent No.1 entered in to reference and on appreciation of the material placed before it and the evidence of the parties the reference was answered in affirmative by means of award dated 6-6-1996, whereby the petitioners were directed to reinstate the workman in any other laboratory with a further direction t pay him compensating amounting to Rs. 10,000/- (ten thousands) and Rs. 500/- (five hundreds) towards costs.

6- It is not in dispute that the respondent No.2 was employed as Research Attendant and he worked from 6-6-1989 to 30-11-1990 i.e. for more than 240 days in a calendar year. It is also not in dispute that his services were terminated without given him the notice and other benefits. There is no evidence to the effect that the workman was engaged on purely daily wage basis and his engagement was of purely contractual nature. Considering this, there is not substance in the argument of the learned Standing Counsel that his case was covered under the provisions of section 2(00) (bb) of the industrial Disputes Act, 1947. It is not the case of the petitioners that the Presiding Officer of the labour court ignored the evidence of the petitioners which was adduced to prove that the engagement was on purely contractual basis.

7- The learned Standing Counsel also pointed out that the establishment of the petitioners could not sustain and continue to operate for want of work and funds and therefore the workman could not have insisted his continuance in the

service. The submission again is of no consequence in view of non-compliance of the provision of section 6-(n) of 'the Act' regarding which clear finding has been given by the labour court and there is nothing to assail the same.

8- In the rejoinder affidavit filed on behalf of the petitioners it has been averred that the establishment of the petitioners in which the workman was employed is not an industry in view of the decision of the Apex Court in **Physical Research Laboratory Vs. K.G. Sharma; (1997) 4 Supreme Court Cases page 257.** It can not be disputed that Public Works Department is an "industry" and it regional laboratories under the quality promotion cell have been established to assist the department to maintain the quality of its economic adventures which consist of construction of building etc. in other words the work under taken by the laboratories has commercial value and it work was not of purely research nature. In the case before the Apex Court the facts were at variance and it was found that the Physical Research Laboratory is engaged in pure research in space science as an institution under the Government of India's Department of Space. The ratio of the reported decision, therefore, has no application to the facts of the instant case and it can not be accepted that the workman was not employed in an industry as defined in section 2(k) of 'the Act".

9- For the foregoing reasons the writ petition has no merit and is liable to be dismissed. The writ petition is dismissed. No order as to costs.

(Irshad Hussain, J.)